

APR-26-2007 THU 04:01 PM SENNIGER POWERS

FAX NO. 3142314342

P. 02

UNL 2999.01  
801204-0011

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Raul G. Barletta and N. Beth Harris  
Serial No. 09/759,287  
Filed January 11, 2001  
Confirmation No. 9782  
For IDENTIFICATION OF VIRULENCE DETERMINANTS  
Examiner Rodney P. Swartz

Art Unit 1645

April 26, 2007

REQUEST FOR REFUND

TO THE DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE,  
SIR:

Applicants' previous representative, Senniger Powers, requests a refund of the fees charged to Deposit Account No. 19-1345 in the amount of \$465.00.

In support of this Request, Senniger Powers states that the \$465 fee was inadvertently charged to Deposit Account No. 19-1345 on February 21, 2007 in relation to the above-noted application. Specifically, on January 31, 2007, applicant's current representative, Stinson Morrison Hecker, LLP, mailed a Notice of Appeal, along with a check in the amount of \$250, and further authorized the Director to charge Deposit Account No. 19-4409 for any additional fees. This Notice of Appeal was filed prior to the three-month date after the mailing of a final Office action and, as such, no extension of time fee was required. Senniger Powers, however, was charged \$465 on February 21, 2007 in relation to the above-referenced case. Senniger Powers submits the fee invoice for Deposit Account No. 19-1345 showing the \$465 charge (Exhibit A). Furthermore, Senniger Powers submits the Notice of Appeal and Pre-Appeal Brief Request for Review filed by Stinson Morrison Hecker, LLP, as downloaded from PAIR (Exhibit B).

Furthermore, even if an extension fee or other fee was required in the above-noted case, Senniger Powers asserts that the fee should not have been withdrawn from Deposit Account No. 19-1345. Specifically, a Notice Regarding Change of Power of Attorney was mailed to Senniger

APR-26-2007 THU 04:02 PM SENNIGER POWERS

FAX NO. 3142314342

P. 03

UNL 2999.01  
801204-0011

Powers, thereby revoking the Power of Attorney given by Applicants to Senniger Powers in the above-noted case, on December 2, 2004. Senniger Powers submits the Notice Regarding Change of Power of Attorney received from the USPTO as Exhibit C. Furthermore, according to PAIR, the current Power of Attorney for the above-noted application is Stinson Morrison Hecker, LLP. Senniger Powers submits the PAIR webpage indicating Attorney/Agent Correspondence Information for the above-noted case as Exhibit D. As such, any fees in relation to the above-noted case should be charged to Applicant's current representative, Stinson Morrison Hecker, LLP, through Deposit Account No. 19-4409.

Based on the foregoing, Senniger Power respectfully requests a refund of the fees in the amount of \$465.00. The requested refund may be made directly to Deposit Account No. 19-1345.

Respectfully Submitted,

/Christopher M. Goff/

Christopher M. Goff, Reg. No. 41,785  
SENNIGER POWERS  
One Metropolitan Square, 16th Floor  
St. Louis, Missouri 63102  
314-231-5400

CMG/JMB/dhm  
Via facsimile (571) 273-6500

APR-26-2007 THU 04:02 PM SENNIGER POWERS

FAX NO. 3142314342

P. 04

EXHIBIT

A

Page 5 of 7

10582193		9204	-\$100.00	\$51,624.67
8 PCT/US07/62339	ENV 10022	1601	\$300.00	\$51,324.67
34 PCT/US07/62339	ENV 10022	1701	\$1,008.00	\$50,316.67
78 PCT/US07/62339	ENV 10022	1704	\$2,059.00	\$48,257.67
785 PCT/US07/62339	ENV 10022	1703	\$12.00	\$48,245.67
2540 10978431	4088CIP/GETS 5290.2	1814	\$130.00	\$48,115.67
5 10915842	KCC 5007 (K-C 20, 559A)	1251	\$120.00	\$47,995.67
4031 11088271	29329-749.503	1202	\$600.00	\$47,395.67
2386 2430008	SMIN 9524 (JC/J/KLL)	7205	\$500.00	\$46,895.67
2387 2430008	SMIN 9524 (JC/J/KLL)	7208	\$1,000.00	\$45,895.67
4482 11676414	VBW 5670	4011	\$75.00	\$45,820.67
4484 11676414	VBW 5670	2311	\$100.00	\$45,720.67
4485 11676414	VBW 5670	1053	\$130.00	\$45,590.67
4483 11676414	VBW 5670	2111	\$250.00	\$45,340.67
4667 11625052	KDY 8501.1	2051	\$65.00	\$45,275.67
4899 11625111	KDY 9501.2	2051	\$85.00	\$45,210.67
4800 10000880	MRZ 9044.1	1251	\$120.00	\$45,090.67
5010 PCT/US07/62398	MTC 6931.2	1601	\$300.00	\$44,790.67
5011 PCT/US07/62398	MTC 6931.2	1701	\$1,008.00	\$43,782.67
5012 PCT/US07/62398	MTC 6931.2	1703	\$4,776.00	\$39,006.67
5014 PCT/US07/62398	MTC 6931.2	8007	\$20.00	\$38,986.67
5013 PCT/US07/62398	MTC 6931.2	1704	\$2,059.00	\$36,927.67
95 E-REPLENISHMENT		9203	-\$40,000.00	\$76,927.67
925 11551300	NWG 5082 PEB/BCW	8021	\$40.00	\$76,887.67
6156 10537380	ADMS 3668	2253	\$510.00	\$76,377.67
152 10059810	MRZ 9038.1	1251	\$120.00	\$76,257.67
2060 11676904	WM 267.00(D1)	1011	\$300.00	\$75,957.67
2081 11676904	WM 267.00(D1)	1111	\$500.00	\$75,457.67
2082 11676904	WM 267.00(D1)	1311	\$200.00	\$75,257.67
2083 11676904	WM 267.00(D1)	1202	\$600.00	\$74,657.67
3618 11622277	KCC 4974.3	1051	\$130.00	\$74,527.67
2057 77112299	PHT 3443 (PIF/LEB/MKS)	7001	\$650.00	\$73,877.67
2342 77112404	DOB 3680 (PIF/LEB/MKS)	7001	\$325.00	\$73,552.67
1 09759287	UNL 2999.01	2253	\$465.00	\$73,087.67
139 76576984	BJCH 10096	7004	\$450.00	\$72,637.67
459 10606661	KCC 4948 (K-C 17,907)	1401	\$500.00	\$72,137.67
7 PCT/US06/61138	UMSL 1588.1	1701	-\$1,008.00	\$73,145.67
8 PCT/US06/61138	UMSL 1586.1	1710	\$931.00	\$72,214.67
9 PCT/US06/61138	UMSL 1588.1	8007	\$20.00	\$72,194.67
716 10029322	KCC 4788 (K.C. NO. 15,397)	1501	\$1,400.00	\$70,794.67
717 10029322	KCC 4788 (K.C. NO. 15,397)	1604	\$300.00	\$70,494.67
858 11677332	MS#318382.01 (6377)	1011	\$300.00	\$70,194.67
859 11677332	MS#318382.01 (6377)	1111	\$500.00	\$69,694.67
860 11677332	MS#318382.01 (6377)	1311	\$200.00	\$69,494.67
501 78572021	BII 7718	7004	\$150.00	\$69,344.67
1045 11608159	RAYO 9384 (SP-1743)	1051	\$130.00	\$69,214.67
667 1074956	HCI 2138 (RGH/KLL)	7205	\$100.00	\$69,114.67
668 1074956	HCI 2138 (RGH/KLL)	7201	\$400.00	\$68,714.67
1437 11273409	K-C 21,528 (KCC 5036)	1806	\$180.00	\$68,534.67
1803 09063477	FSU-10302	1251	\$120.00	\$68,414.67
1804 09063477	FSU-10302	1402	\$500.00	\$67,914.67

APR-26-2007 THU 04:02 PM SENNIGER POWERS

FAX NO. 3142314342

P. 05

EXHIBIT

B



Stinson docket #  
73919-0511

Serial No.: 09/777,492  
Docket No.: 257/103

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s) : Raul G. Barletta, N. Beth Harris.  
Serial No. : 09/759,287 UNL 2999.1  
Filing Date : January 11, 2001  
Title : Identification of Virulence Determinants  
Group/Art Unit : 1645  
Examiner : Rodney P. Swartz

Confirmation No. : 9782  
Docket No. : UNL 2999.1 (801204-0011)

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

NOTICE OF APPEAL

Pursuant to 37 C.F.R. § 41.31, Applicant hereby appeals to the Board of Patent Appeals and Interferences from the decision of the examiner in a final Office Action, dated August 1, 2006, finally rejecting claims 15-42 and 54 of the application. Enclosed is a check in the amount of \$250 as payment of the notice of appeal fee.

Submitted concurrently with this Notice of Appeal is a Pre-Appeal Brief Request for Review.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

By: Nancy T. Morris  
Nancy T. Morris, Reg. No. 42,017  
STINSON MORRISON HECKER LLP  
1201 Walnut, Suite 2900  
Kansas City, MO 64106-2150  
Telephone: (816) 842-8600  
Facsimile: (816) 691-3262

02/06/2007 LMONDINK 00000026 09/59287

01 FC:2401

250.00 00

Certificate of Mailing Under 37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, as:

Date: Feb 26, 2007Signature: Lora GureyPrinted Name: Lora Gurey

0802/801204 0011/7431793.1

The Director is hereby authorized to charge any additional amount required, or credit any overpayment, to Deposit Account No. 19-8409.

APR-26-2007 THU 04:03 PM SENNIGER POWERS

FAX NO. 3142314342

P. 08



Serial No.: 09/777,492  
Docket No.: 257/103

**THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor(s) : Raul G. Barletta, N. Beth Harris.  
Serial No. : 09/759,287  
Filing Date : January 11, 2001  
Title : Identification of Virulence Determinants  
Group/Art Unit : 1645  
Examiner : Rodney P. Swartz  
  
Confirmation No. : 9782  
Docket No. : UNL 2999.1 (801204-0011)

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicant Requests review of the final rejection made in the Office Action of August 1, 2006 in the above-identified application.

- No amendments are being filed with this request.
- This request is being filed concurrently with a Notice of Appeal.
- The review is requested for the reasons stated in the "Remarks" section on the attached sheets.

**Certificate of Mailing Under 37 C.F.R. 1.8**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450, on:

Date: Feb 26, 2007

Signature: [Handwritten Signature]

Printed Name: Lisa G. Berry

The Director is hereby authorized to charge any additional amount required, or credit any overpayment, to Deposit Account No. 19-4409.

APR-28-2007 THU 04:03 PM SENNIGER POWERS

FAX NO. 3142314342

P. 07

Serial No.: 09/777,492  
Docket No.: 257/103

**REMARKS**

In response to the Office Action dated August 1, 2006, the Examiner Interview conducted on December 12, 2006, and in conjunction with the Notice of Appeal submitted herewith, Applicant requests review of the final rejection of claims 15-42 and 54 of the above-identified application for the following reasons:

In the Office Action, under the heading "Rejections Maintained", the Examiner maintains the rejection of all claims under 35 U.S.C. § 112, second paragraph, as indefinite for differentiation of "growing" from "nongrowing". Specifically, the examiner then states that "it remains unclear how one distinguishes between the wanted and non wanted bacteria if the antimicrobial has 'reduced affect' on non-growing bacteria without some iteration of what constitutes 'reduced' affect. This reduction may be 0.1% or 100%, e.g., if the 'reduced' affect is only 0.1%, i.e., this means it results in the killing of 99.9% of non-growing bacteria. Thus, it is unclear what level of 'reduced' affect is acceptable for the instant invention."

Applicant has submitted arguments in response to the examiner's rejection, e.g., see Applicant's Amendment After Final at page 7 (mailroom date 11-7-06) in explanation of why any level of "reduced" affect is acceptable for the instant invention. Notably, in a telephonic interview with the examiner held on December 12, 2006, Applicant reiterated the arguments presented in the referenced Amendment After Final and further argued that one skilled in the art would know to use a synchronous culture of mutated bacteria if s/he wanted to effect the number of non-growing but viable bacteria.

APR-26-2007 THU 04:03 PM SENNIGER POWERS

FAX NO. 3142314342

P. 08

Serial No.: 09/777,492  
Docket No.: 257/103

In summary, the phrase "reduced affect on" in independent claims 15, 28, 29, and 42 (and thus dependent claims 16-27, 30-41, and 54) is not indefinite. As such, the method differentiates "growing" from "nongrowing" and the examiner's rejection should be withdrawn.


In view of the foregoing remarks, it is respectfully submitted that the claims of the present application are in condition for allowance and eventual issuance. Such action is respectfully requested.

Should this Review Board have any further questions or comments that need be addressed in order to obtain allowance, it is invited to contact the undersigned attorney at the number listed below.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

By

  
Nancy T. Morris, Reg. No. 42,017  
STINSON MORRISON HECKER LLP  
1201 Walnut Street, Suite 2900  
Kansas City, MO 64106-2150  
Telephone: (816) 842-8600  
Facsimile: (816) 691-3495

DB02/801204 0011/7431799.1

3

APR-26-2007 THU 04:03 PM SENNIGER POWERS

FAX NO. 3142314342

P. 09

Page 1 of 1

---

09/759,287	Identification of virulence determinants	03-07-2007::16:02:26
------------	--	----------------------

---

**Bibliographic Data**

Application Number:	09/759,287	Customer Number:	-
Filing or 371 (c) Date:	01-11-2001	Status:	Notice of Appeal Filed
Application Type:	Utility	Status Date:	03-07-2007
Examiner Name:	SWARTZ, RODNEY P	Location:	ELECTRONIC
Group Art Unit:	1645	Location Date:	-
Confirmation Number:	9782	Earliest Publication No:	US 2002-0064861 A1
Attorney Docket Number:	UNE 2999.01	Earliest Publication Date:	05-30-2002
Class / Subclass:	435/006	Patent Number:	-
First Named Inventor:	Raul Barletta , Lincoln, NE	Issue Date of Patent:	-

---

Title of Invention:	Identification of virulence determinants
---------------------	--

---

Close Window



APR-26-2007 THU 04:04 PM SENNIGER POWERS

FAX NO. 3142314342

P. 10

EXHIBIT

C

Page 1 of 1



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22304-1450  
www.uspto.gov

APPLICATION NUMBER	FILING OR 371 (2) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/759,287	01/11/2001	Reul G. Barletta	UNL 2999.01

000321  
SENNIGER POWERS LEAVITT AND ROEDEL  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

CONFIRMATION NO. 9782

\*OC000000014660040\*

\*OC000000014660040\*

Date Mailed: 12/02/2004

## NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 03/22/2004.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervened as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record (37 CFR 1.33).

  
EASON SMALLWOOD  
1600 (571) 272-0551

OFFICE COPY

APR-26-2007 THU 04:04 PM SENNIGER POWERS

FAX NO. 3142314342

P. 11

EXHIBIT

D

Correspondence Address

Page 1 of 1

09/759,287 Identification of virulence determinants

03-07-  
2007::15:46:32**Attorney/Agent Correspondence Information****Correspondence Address**

Name:

STINSON MORRISON HECKER LLP

Address:

ATTN: PATENT GROUP  
1201 WALNUT STREET, SUITE 2800  
KANSAS CITY, MO 64106-2150**Attorney/Agent Information**

Reg #	Name	Phone
41524	Bell, Susan	816-842-8600
41904	Carlson, Judith	816-842-8600
43604	Eisea, Kelly	316-265-8800
42748	Knedlik, Lana	816-691-3248
24533	Marsh, James Jr	816-842-8600
42017	Morris, Nancy	402-930-1759
44102	Sellers, Andrea	816-842-8600
34017	Slicer, Penny	816-691-3438
25717	Wharton, J	816-842-8600
48670	Young, Mark	816-842-8600

Close Window

APR-26-2007 THU 04:01 PM SENNIGER POWERS

FAX NO. 3142314342

P. 01

SENNIGER POWERS  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST. LOUIS, MISSOURI 63102  
TELEPHONE (314) 231-5400  
FACSIMILE (314) 231-4342

## FACSIMILE TRANSMITTAL COVER SHEET

DATE: April 26, 2007 FILE #: UNL 2999.01 SENT BY: Christopher M. Goff  
801204-0011

FACSIMILE NUMBER BEING CALLED: 571-273-6500

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: USPTO Deposit Account  
Attn: Refund Branch

THIS FACSIMILE IS BEING SENT BY:

NAME: Daphne MooreNUMBER OF PAGES: 11 INCLUDING COVER SHEET

TIME SENT: 4:00 p.m. OPERATOR'S NAME: Daphne Moore

## COMMENT(S)/NOTE(S):

Refund Request for Application Serial No. 09/759,287 and Exhibits A, B, C, and D

This facsimile contains CONFIDENTIAL INFORMATION WHICH ALSO MAY BE LEGALLY PRIVILEGED and which is intended only for the use of the Addressee(s) named above. If you are not the intended recipient of this facsimile, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via the U.S. Postal Service. Thank you.

IF YOU DO NOT RECEIVE ALL PAGES CLEARLY, CALL BACK AS SOON AS POSSIBLE. CONFIRMING NUMBER: (314) 231-5400.

**This Page is Inserted by IFW Indexing and Scanning  
Operations and is not part of the Official Record**

**BEST AVAILABLE IMAGES**

Defective images within this document are accurate representations of the original documents submitted by the applicant.

Defects in the images include but are not limited to the items checked:

- ☐ **BLACK BORDERS**
- ☐ **IMAGE CUT OFF AT TOP, BOTTOM OR SIDES**
- ☐ **FADED TEXT OR DRAWING**
- ☐ **BLURRED OR ILLEGIBLE TEXT OR DRAWING**
- ☐ **SKEWED/SLANTED IMAGES**
- ☐ **COLOR OR BLACK AND WHITE PHOTOGRAPHS**
- ☐ **GRAY SCALE DOCUMENTS**
- ☒ **LINES OR MARKS ON ORIGINAL DOCUMENT**
- ☐ **REFERENCE(S) OR EXHIBIT(S) SUBMITTED ARE POOR QUALITY**
- ☐ **OTHER:** \_\_\_\_\_

**IMAGES ARE BEST AVAILABLE COPY.**

**As rescanning these documents will not correct the image problems checked, please do not report these problems to the IFW Image Problem Mailbox.**

Document code: WFEE

United States Patent and Trademark Office  
Sales Receipt for Accounting Date: 02/21/2007

~~VBARLOW SALE #00000001 Mailroom DT: 09/04/2003 191345 09759287~~  
~~01 FC:2253 465.00 DA~~

Adjustment date: 05/10/2007 SFELEKE1  
02/21/2007 VBARLOW 00000001 191345 09759287  
01 FC:2253 465.00 CR